

95TH CONGRESS
1ST SESSION

H. R. 7308

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1977

Mr. RODINO introduced the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 4, 1977

Rereferred jointly to the Committee on the Judiciary and the Select Committee on Intelligence

A BILL

To amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Foreign Intelligence Sur-
4 veillance Act of 1977".

5 SEC. 2. Title 18, United States Code, is amended by
6 adding a new chapter after chapter 119 as follows:

I—O

1 **"Chapter 120.—ELECTRONIC SURVEILLANCE WITH-**
2 **IN THE UNITED STATES FOR FOREIGN INTEL-**
3 **LIGENCE PURPOSES**

"Sec.

"2521. Definitions.

"2522. Authorization for electronic surveillance for foreign intelligence purposes.

"2523. Designation of judges authorized to grant orders for electronic surveillance.

"2524. Application for an order.

"2525. Issuance of an order.

"2526. Use of information.

"2527. Report of electronic surveillance.

4 **"§ 2521. Definitions**

5 **"(a) Except as otherwise provided in this section the**
6 **definitions of section 2510 of this title shall apply to this**
7 **chapter.**

8 **"(b) As used in this chapter—**

9 **"(1) 'Foreign power' means—**

10 **"(A) a foreign government or any component**
11 **thereof, whether or not recognized by the United**
12 **States;**

13 **"(B) a faction of a foreign nation or nations,**
14 **not substantially composed of United States persons;**

15 **"(C) an entity, which is openly acknowledged**
16 **by a foreign government or governments to be**
17 **directed and controlled by such foreign government**
18 **or governments;**

19 **"(D) a foreign-based terrorist group;**

20 **"(E) a foreign-based political organization,**

1 not substantially composed of United States persons;

2 or

3 “(F) an entity which is directed and con-
4 trolled by a foreign government or governments.

5 “(2) ‘Agent of a foreign power’ means—

6 “(A) any person, other than a United States
7 citizen or an alien lawfully admitted for permanent
8 residence (as defined in section 101 (a) (20) of the
9 Immigration and Nationality Act), who—

10 “(i) is an officer or employee of a foreign
11 power;

12 “(ii) knowingly engages in clandestine
13 intelligence activities for or on behalf of a for-
14 eign power under circumstances which indi-
15 cate that such activities would be harmful to
16 the security of the United States; or

17 “(iii) conspires with or knowingly aids or
18 abets a person described in paragraph (ii)
19 above;

20 “(B) any person who—

21 “(i) knowingly engages in clandestine in-
22 telligence activities for or on behalf of a foreign
23 power, which activities involve or will involve
24 a violation of the criminal statutes of the United
25 States;

1 “(ii) knowingly engages in activities that
2 involve or will involve sabotage or terrorism
3 for or on behalf of a foreign power;

4 “(iii) pursuant to the direction of an in-
5 telligence service or intelligence network of a
6 foreign power, knowingly collects or transmits
7 information or material to an intelligence serv-
8 ice or intelligence network of a foreign power
9 in a manner intended to conceal the nature of
10 such information or material or the fact of such
11 transmission or collection, under circumstances
12 which indicate the transmission of such infor-
13 mation or material would be harmful to the
14 security of the United States, or that lack of
15 knowledge by the United States of such collec-
16 tion or transmission would be harmful to the
17 security of the United States; or

18 “(iv) conspires with or knowingly aids or
19 abets any person engaged in activities described
20 in subsections B (i) through (iii) above.

21 “(3) ‘Terrorism’ means activities which—

22 “(A) are violent acts or acts dangerous to
23 human life which would be criminal under the laws
24 of the United States or of any State if committed
25 within its jurisdiction; and

5

1 “(B) appear to be intended—

2 “(i) to intimidate or coerce the civilian
3 population,

4 “(ii) to influence the policy of a govern-
5 ment by intimidation or coercion, or

6 “(iii) to affect the conduct of a govern-
7 ment by assassination or kidnapping.

8 “(4) ‘Sabotage’ means activities which would be
9 prohibited by title 18, United States Code, chapter 105,
10 if committed against the United States.

11 “(5) ‘Foreign intelligence information’ means—

12 “(A) information which relates to, and is
13 deemed necessary to the ability of the United States
14 to protect itself against, actual or potential attack or
15 other grave hostile acts of a foreign power or an
16 agent of a foreign power;

17 “(B) information with respect to a foreign
18 power or foreign territory, which relates to, and
19 because of its importance is deemed essential to—

20 “(i) the national defense or the security
21 of the Nation; or

22 “(ii) the successful conduct of the foreign
23 affairs of the United States;

24 “(C) information which relates to, and is
25 deemed necessary to the ability of the United States

1 to protect against terrorism by a foreign power or
2 an agent of a foreign power;

3 “(D) information which relates to, and is
4 deemed necessary to the ability of the United States
5 to protect against sabotage by a foreign power or
6 an agent of a foreign power;

7 “(E) information which relates to, and is
8 deemed necessary to the ability of the United States
9 to protect against the clandestine intelligence activ-
10 ities of an intelligence service or network of a foreign
11 power or an agent of a foreign power.

12 “(G) ‘Electronic surveillance’ means—

13 “(A) the acquisition by an electronic, mechan-
14 ical, or other surveillance device of the contents of
15 any wire or radio communication sent by or in-
16 tended to be received by a particular, known United
17 States person who is in the United States, where
18 the contents are acquired by intentionally target-
19 ing that United States person, under circumstances
20 in which a person has a reasonable expectation of
21 privacy and a warrant would be required for law
22 enforcement purposes;

23 “(B) the acquisition by an electronic, mechan-
24 ical, or other surveillance device, of the contents of
25 any wire communication to or from a person in the

1 United States, without the consent of any party
2 thereto, where such acquisition occurs in the United
3 States while the communication is being transmitted
4 by wire;

5 “(C) the intentional acquisition, by an elec-
6 tronic, mechanical, or other surveillance device, of
7 the contents of any radio communication, under
8 circumstances in which a person has a reasonable
9 expectation of privacy and a warrant would be
10 required for law enforcement purposes, and where
11 both the sender and all intended recipients are
12 located within the United States; or

13 “(D) the installation or use of an electronic,
14 mechanical, or other surveillance device in the
15 United States for monitoring to acquire informa-
16 tion, other than from a wire or radio communication,
17 under circumstances in which a person has a reason-
18 able expectation of privacy and a warrant would be
19 required for law enforcement purposes.

20 “(7) ‘Attorney General’ means the Attorney Gen-
21 eral of the United States (or Acting Attorney General
22 or an Assistant Attorney General specially designated
23 in writing by the Attorney General.

24 “(8) ‘Minimization procedures’ means procedures
25 which are reasonably designed to minimize the acquisi-

1 tion, retention, and dissemination of any information
2 concerning United States persons without their consent
3 that does not relate to the ability of the United States—

4 “(A) to protect itself against actual or poten-
5 tial attack or other grave hostile acts of a foreign
6 power or an agent of a foreign power;

7 “(B) to provide for the national defense or
8 security of the Nation;

9 “(C) to provide for the conduct of the foreign
10 affairs of the United States;

11 “(D) to protect against terrorism by a foreign
12 power or an agent of a foreign power;

13 “(E) to protect against sabotage by a foreign
14 power or an agent of a foreign power; or

15 “(F) to protect against the clandestine intelli-
16 gence activities of an intelligence service or net-
17 work of a foreign power or an agent of a foreign
18 power;

19 and which are reasonably designed to insure that in-
20 formation which relates solely to the conduct of foreign
21 affairs shall not be maintained in such a manner as to
22 permit the retrieval of such information by reference to a
23 United States person, without his consent, who was a
24 party to a communication acquired pursuant to this

1 chapter; and if the target of the electronic surveillance
2 is a foreign power which qualifies as such solely on the
3 basis that it is an entity controlled and directed by a
4 foreign government or governments, and unless there is
5 probable cause to believe that a substantial number of
6 the officers or executives of such entity are officers or
7 employees of a foreign government, or agents of a
8 foreign power as defined in section 2521 (b) (2) (B),
9 procedures which are reasonably designed to prevent the
10 acquisition, retention, and dissemination of communica-
11 tions of unconsenting United States persons who are not
12 officers or executives of such entity responsible for those
13 areas of its activities which involve foreign intelligence
14 information.

15 “(9) ‘United States person’ means a citizen of the
16 United States, an alien lawfully admitted for permanent
17 residence (as defined in section 101 (a) (20) of the
18 Immigration and Nationality Act), an unincorporated
19 association a substantial number of members of which
20 are citizens of the United States or aliens lawfully ad-
21 mitted for permanent residence or a corporation which
22 is incorporated in the United States, but not including
23 corporations which are foreign powers.

24 “(10) ‘United States’ when used in a geographic

1 sense means all areas under the territorial sovereignty of
2 the United States, the Trust Territory of the Pacific
3 Islands, and the Canal Zone.

4 **“§ 2522. Authorization for electronic surveillance for for-**
5 **eign intelligence purposes**

6 “Applications for a court order under this chapter are
7 authorizing electronic surveillance under this chapter, such
8 powered the Attorney General to approve applications to
9 Federal judges having jurisdiction under section 2523 of this
10 chapter, and a judge to whom an application is made may
11 grant an order, in conformity with section 2525 of this
12 chapter, approving electronic surveillance of a foreign power
13 or an agent of a foreign power for the purpose of obtaining
14 foreign intelligence information.

15 **“§ 2523. Designation of judges authorized to grant orders**
16 **for electronic surveillance**

17 “(a) The Chief Justice of the United States shall public-
18 ly designate seven district court judges, each of whom shall
19 have jurisdiction to hear applications for and grant orders
20 approving electronic surveillance anywhere within the
21 United States under the procedures set forth in this chapter,
22 except that no judge designated under this subsection shall
23 have jurisdiction of the same application for electronic sur-
24 veillance under this chapter which has been denied pre-

1 viously by another judge designated under this subsection.
2 If any judge so designated denies an application for an order
3 authorizing electronic surveillance under this chapter, such
4 judge shall provide immediately for the record a written
5 statement of each reason for his decision and, on motion of
6 the United States, the record shall be transmitted, under
7 seal, to the special court of review established in subsection
8 (b).

9 “(b) The Chief Justice shall publicly designate three
10 judges, one of whom shall be publicly designated as the
11 presiding judge, from the United States district courts or
12 courts of appeals who together shall comprise a special
13 court of review which shall have jurisdiction to review the
14 denial of any application made under this chapter. If such
15 special court determines that the application was properly
16 denied, the special court shall immediately provide for the
17 record a written statement of each reason for its decision
18 and, on petition of the United States for a writ of certiorari,
19 the record shall be transmitted under seal to the Supreme
20 Court, which shall have jurisdiction to review such decision.

21 “(c) Proceedings under this chapter shall be con-
22 ducted as expeditiously as possible. The record of proceed-
23 ings under this chapter, including applications made and
24 orders granted, shall be sealed and maintained under secu-

1 rity measures established by the Chief Justice in consulta-
2 tion with the Attorney General and the Director of Central
3 Intelligence.

4 **"§ 2524. Application for an order**

5 "(a) Each application for an order approving elec-
6 tronic surveillance under this chapter shall be made by a
7 Federal officer in writing upon oath or affirmation to a judge
8 having jurisdiction under section 2523 of this chapter. Each
9 application shall require the approval of the Attorney Gen-
10 eral based upon his finding that it satisfies the criteria and
11 requirements of such application as set forth in this chapter.
12 It shall include the following information:

13 "(1) the identity of the Federal officer making
14 the application;

15 "(2) the authority conferred on the Attorney
16 General by the President of the United States and the
17 approval of the Attorney General to make the
18 application;

19 "(3) the identity or a description of the target of
20 the electronic surveillance;

21 "(4) a statement of the facts and circumstances
22 relied upon by the applicant to justify his belief that—

23 "(A) the target of the electronic surveillance
24 is a foreign power or an agent of a foreign power;
25 and

1 “(B) the facilities or the place at which the
2 electronic surveillance is directed are being used, or are
3 about to be used, by a foreign power or an agent of a
4 foreign power.

5 “(5) a statement of the proposed minimization pro-
6 cedures;

7 “(6) when the target of the surveillance is not a
8 foreign power as defined in section 2521(b)(1)
9 (A), (B), or (C), a detailed description of the nature
10 of the information sought;

11 “(7) a certification or certifications by the Assist-
12 ant to the President for National Security Affairs or an
13 executive branch official or officials designated by the
14 President from among those executive officers employed
15 in the area of national security or defense and appointed
16 by the President with the advice and consent of the
17 Senate—

18 “(A) that the information sought is foreign
19 intelligence information;

20 “(B) that the purpose of the surveillance is to
21 obtain foreign intelligence information;

22 “(C) that such information cannot reasonably
23 be obtained by normal investigative techniques;

24 “(D) including a designation of the type of
25 foreign intelligence information being sought ac-

1 cording to the categories described in section 2521
2 (b) (5) ;

3 “(E) when the target of the surveillance is
4 not a foreign power, as defined in section 2521 (b)
5 (1) (A), (B), or (C), including a statement of
6 the basis for the certification that—

7 “(i) the information sought is the type of
8 foreign intelligence information designated; and

9 “(ii) such information cannot reasonably
10 be obtained by normal investigative techniques;

11 “(F) when the target of the surveillance is a
12 foreign power, as defined in section 2521 (b) (1)
13 (A), (B), or (C), stating the period of time for
14 which the surveillance is required to be maintained;

15 “(8) when the target of the surveillance is not a
16 foreign power, as defined in section 2521 (b) (1) (A),
17 (B), or (C), a statement of the means by which the
18 surveillance will be effected, and when the target is
19 a foreign power, as defined in section 2521 (b) (1)
20 (A), (B), or (C), a designation of the type of elec-
21 tronic surveillance to be used according to the categories
22 described in section 2521 (b) (6) ;

23 “(9) a statement of the facts concerning all pre-
24 vious applications that have been made to any judge
25 under this chapter involving any of the persons, facilities,

1 or places specified in the application, and the action
2 taken on each previous application; and

3 “(10) when the target of the surveillance is not
4 a foreign power, as defined in section 2521 (b) (1)
5 (A), (B), or (C), a statement of the period of time
6 for which the electronic surveillance is required to be
7 maintained.

8 If the nature of the intelligence gathering is such that the
9 approval of the use of electronic surveillance under this
10 chapter should not automatically terminate when the de-
11 scribed type of information has first been obtained, a descrip-
12 tion of facts supporting the belief that additional information
13 of the same type will be obtained thereafter.

14 “(b) The Attorney General may require any other
15 affidavit or certification from any other officer in connection
16 with the application.

17 “(c) The judge may require the applicant to furnish
18 such other information as may be necessary to make the
19 determinations required by section 2525 of this chapter.

20 **“§ 2525. Issuance of an order**

21 “(a) Upon an application made pursuant to section
22 2524 of this title, the judge shall enter an ex parte order as
23 requested or as modified approving the electronic surveil-
24 lance if he finds that—

25 “(1) the President has authorized the Attorney

1 General to approve applications for electronic surveil-
2 lance for foreign intelligence information;

3 “(2) the application has been made by a Federal
4 officer and approved by the Attorney General;

5 “(3) on the basis of the facts submitted by the
6 applicant there is probable cause to believe that—

7 “(A) the target of the electronic surveillance is
8 a foreign power or an agent of a foreign power; and

9 “(B) the facilities or place at which the elec-
10 tronic surveillance is directed are being used, or
11 are about to be used, by a foreign power or an agent
12 of a foreign power;

13 “(4) the proposed minimization procedures meet
14 the definition of minimization procedures under section
15 2521 (b) (8) of this title;

16 “(5) the application which has been filed contains
17 the description and certification or certifications, speci-
18 fied in section 2524 (a) (7) and, if the target is a United
19 States person, the certification or certifications are not
20 clearly erroneous on the basis of the statement made
21 under section 2524 (a) (7) (E).

22 “(b) An order approving an electronic surveillance
23 under this section shall—

24 “(1) specify—

1 “(A) the identity or a description of the target
2 of the electronic surveillance;

3 “(B) the nature and location of the facilities or
4 the place at which the electronic surveillance will be
5 directed;

6 “(C) the type of information sought to be
7 acquired;

8 “(D) when the target of the surveillance is not
9 a foreign power, as defined in section 2521 (b) (1)
10 (A), (B), or (C), the means by which the elec-
11 tronic surveillance will be effected, and when the
12 target is a foreign power, as defined in section 2521
13 (b) (1) (A), (B), or (C), a designation of the
14 type of electronic surveillance to be used according
15 to the categories described in section 2521 (b) (6) ;
16 and

17 “(E) the period of time during which the elec-
18 tronic surveillance is approved; and

19 “(2) direct—

20 “(A) that the minimization procedures be
21 followed;

22 “(B) that, upon the request of the applicant, a
23 specified communication or other common carrier,
24 landlord, custodian, contractor, or other specified

1 person furnish the applicant forthwith any and all
2 information, facilities, or technical assistance, neces-
3 sary to accomplish the electronic surveillance in
4 such manner as will protect its secrecy and produce
5 a minimum of interference with the services that
6 such carrier, landlord, custodian, contractor, or
7 other person is providing that target of electronic
8 surveillance;

9 “(C) that such carrier, landlord, custodian, or
10 other person maintain under security procedures
11 approved by the Attorney General and the Director
12 of Central Intelligence any records concerning the
13 surveillance or the aid furnished which such person
14 wishes to retain;

15 “(D) that the applicant compensate, at the
16 prevailing rate, such carrier, landlord, custodian, or
17 other person for furnishing such aid.

18 “(c) An order issued under this section may approve
19 an electronic surveillance not targeted against a foreign
20 power, as defined in section 2521 (b) (1) (A), (B), or
21 (C), for the period necessary to achieve its purpose, or for
22 ninety days, whichever is less; an order under this section
23 shall approve an electronic surveillance targeted against a
24 foreign power, as defined in section 2521 (b) (1) (A), (B),
25 or (C) for the period specified in the certification required

1 in section 2524 (a) (7) (F), or for one year, whichever is
2 less. Extensions of an order issued under this chapter may
3 be granted on the same basis as an original order upon an
4 application for an extension made in the same manner as
5 required for an original application and after new findings
6 required by subsection (a) of this section. In connection
7 with applications for extensions where the target is not a
8 foreign power, as defined in section 2521 (b) (1) (A),
9 (B), or (C), the judge may require the applicant to submit
10 information, obtained pursuant to the original order or to
11 any previous extensions, as may be necessary to make new
12 findings of probable cause.

13 “(d) Notwithstanding any other provision of this chap-
14 ter when the Attorney General reasonably determines that—

15 “(1) an emergency situation exists with respect to
16 the employment of electronic surveillance to obtain for-
17 eign intelligence information before an order authorizing
18 such surveillance can with due diligence be obtained, and

19 “(2) the factual basis for issuance of an order
20 under this chapter to approve such surveillance exists,
21 he may authorize the emergency employment of electronic
22 surveillance if a judge designated pursuant to section 2523
23 of this chapter is informed by the Attorney General or his
24 designate at the time of such authorization that the decision
25 has been made to employ emergency electronic surveillance

1 and if an application in accordance with this chapter is
2 made to that judge as soon as practicable, but not more than
3 twenty-four hours after the Attorney General authorizes
4 such acquisition. If the Attorney General authorizes such
5 emergency employment of electronic surveillance, he shall
6 require that the minimization procedures required by this
7 chapter for the issuance of a judicial order be followed. In
8 the absence of a judicial order approving such electronic
9 surveillance, the surveillance shall terminate when the infor-
10 mation sought is obtained, when the application for the
11 order is denied, or after the expiration of twenty-four hours
12 from the time of authorization by the Attorney General,
13 whichever is earliest. In the event that such application for
14 approval is denied, or in any other case where the electronic
15 surveillance is terminated without an order having been
16 issued, no information obtained or evidence derived from
17 such surveillance shall be received in evidence or otherwise
18 disclosed in any trial, hearing or other proceeding in or
19 before any court, grand jury, department, office, agency,
20 regulatory body, legislative committee or other authority
21 of the United States, a State or political subdivision thereof.
22 A denial of the application made under this subsection may
23 be reviewed as provided in section 2523.

24 **“§ 2526. Use of information**

25 “(a) Information concerning United States persons

1 acquired from an electronic surveillance conducted pursuant
2 to this chapter may be used and disclosed by Federal officers
3 and employees without the consent of the United States
4 person only for purposes specified in section 2521 (b) (8)
5 (A) through (F), or for the enforcement of the criminal
6 law if its use outweighs the possible harm to the national
7 security. No otherwise privileged communication obtained
8 in accordance with, or in violation of, the provisions of this
9 chapter shall lose its privileged character.

10 “(b) The minimization procedures required under this
11 chapter shall not preclude the retention and disclosure, for
12 law enforcement purposes, of any information which con-
13 stitutes evidence of a crime if such disclosure is accompanied
14 by a statement that such evidence, or any information
15 derived therefrom, may only be used in a criminal proceed-
16 ing with the advance authorization of the Attorney General.

17 “(c) Whenever the Government intends to enter into
18 evidence or otherwise use or disclose in any trial, hearing,
19 or other proceeding in or before any court, department, officer,
20 agency, or other authority of the United States, any informa-
21 tion obtained or derived from an electronic surveillance, the
22 Government shall prior to the trial, hearing, or other proceed-
23 ing or at a reasonable time prior to an effort to so disclose
24 or so use the information or submit it in evidence notify the
25 court in which the information is to be disclosed or used or,

1 if the information is to be disclosed or used in or before
2 another authority, shall notify a court in the district wherein
3 the information is to be so disclosed or so used that the Gov-
4 ernment intends to so disclose or so use such information.
5 Whenever any court is so notified, or whenever a motion is
6 made pursuant to section 3504 of this title, or any other
7 statute or rule of the United States to suppress evidence on
8 the grounds that it was obtained or derived from an unlawful
9 electronic surveillance, the court, or where the motion is
10 made before another authority, a court in the same district
11 as the authority, shall notwithstanding any other law, if the
12 Government by affidavit asserts that an adversary hearing
13 would harm the national security or the foreign affairs of the
14 United States, review in camera and ex parte the applica-
15 tion, order, and so much of the transcript of the surveillance
16 as may be necessary to determine whether the surveillance
17 was authorized and conducted in a manner that did not vio-
18 late any right afforded by the Constitution and statutes of
19 the United States to the person aggrieved: *Provided*, That,
20 in making this determination, the court shall disclose to the
21 aggrieved person portions of the application, order, or tran-
22 script only where such disclosure is necessary for an accurate
23 determination of the legality of the surveillance. If the court
24 determines that the electronic surveillance of the person ag-
25 grieved was not lawfully authorized or conducted, the court

1 shall in accordance with the requirements of law suppress
2 that information which was obtained or evidence derived un-
3 lawfully from the electronic surveillance of the person
4 aggrieved.

5 “(d) If an emergency employment of the electronic
6 surveillance is authorized under section 2525 (d) and a sub-
7 sequent order approving the surveillance is not obtained,
8 the judge shall cause to be served on any United States per-
9 son named in the application and on such other United States
10 persons subject to electronic surveillance as the judge may
11 determine in his discretion it is in the interest of justice to
12 serve, notice of—

13 “(1) the fact of the application;

14 “(2) the period of the surveillance; and

15 “(3) the fact that during the period information
16 was or was not obtained.

17 On an ex parte showing of good cause to the judge the serv-
18 ing of the notice required by this subsection may be post-
19 poned or suspended for a period not to exceed ninety days.
20 Thereafter, on a further ex parte showing of good cause, the
21 court shall forego ordering the serving of the notice required
22 under this subsection.

23 **“§ 2527. Report of electronic surveillance**

24 “In April of each year, the Attorney General shall re-
25 port to the Administrative Office of the United States Courts

1 and shall transmit to Congress with respect to the preceding
2 calendar year—

3 “(1) the total number of applications made for
4 orders and extensions of orders approving electronic
5 surveillance; and

6 “(2) the total number of such orders and extensions
7 either granted, modified, or denied.”.

8 SEC. 3. The provisions of this Act and the amendment
9 made hereby shall become effective upon enactment: *Pro-*
10 *vided*, That, any electronic surveillance approved by the
11 Attorney General to gather foreign intelligence information
12 shall not be deemed unlawful for failure to follow the proce-
13 dures of chapter 120, title 18, United States Code, if that
14 surveillance is terminated or an order approving that sur-
15 veillance is obtained under this chapter within ninety days
16 following the designation of the first judge pursuant to section
17 2523 of chapter 120, title 18, United States Code.

18 SEC. 4. Chapter 119 of title 18, United States Code, is
19 amended as follows:

20 (a) Section 2511 (1) is amended—

21 (1) by inserting “or chapter 120 or with respect
22 to techniques used by law enforcement officers not
23 involving the interception of wire or oral communica-
24 tions as otherwise authorized by a search warrant or

1 order of a court of competent jurisdiction," immediately
2 after "chapter" in the first sentence;

3 (2) by inserting a comma and "or, under color of
4 law, willfully engages in any other form of electronic
5 surveillance as defined in chapter 120" immediately
6 before the semicolon in paragraph (a) ;

7 (3) by inserting "or information obtained under
8 color of law by any other form of electronic surveillance
9 as defined in chapter 120" immediately after "contents
10 of any wire or oral communication" in paragraph (c) ;

11 (4) by inserting "or any other form of electronic
12 surveillance, as defined in chapter 120," immediately
13 before "in violation" in paragraph (c) ;

14 (5) by inserting "or information obtained under
15 color of law by any other form of electronic surveillance
16 as defined in chapter 120" immediately after "any wire
17 or oral communication" in paragraph (d) ; and

18 (6) by inserting "or any other form of electronic
19 surveillance, as defined in chapter 120," immediately
20 before "in violation" in paragraph (d) .

21 (b) (1) Section 2511 (2) (a) (i) is amended by insert-
22 ing the words "or radio communication" after the words
23 "wire communication" and by inserting the words "or other-
24 wise acquire" after the word "intercept".

1 (2) Section 2511 (2) (a) (ii) is amended by inserting
2 the words "or chapter 120" after the second appearance of
3 the word "chapter", and by striking the period at the end
4 thereof and adding the following: "or engage in electronic
5 surveillance, as defined in chapter 120: *Provided, however,*
6 That before the information, facilities, or technical assistance
7 may be provided, the investigative or law enforcement
8 officer shall furnish to the officer, employee, or agent of the
9 carrier either—

10 “(1) an order signed by the authorizing judge
11 certifying that a court order directing such assistance
12 has been issued; or

13 “(2) in the case of an emergency interception or
14 electronic surveillance as provided for in section 2518
15 (7) of this chapter or section 2525 (d) of chapter 120,
16 a certification under oath by investigative or law en-
17 forcement officer that the applicable statutory require-
18 ments have been met,

19 and setting forth the period of time for which the electronic
20 surveillance is authorized and describing the facilities from
21 which the communication is to be acquired. Any violation
22 of this subsection by a communication common carrier or
23 an officer, employee, or agency thereof, shall render the
24 carrier liable for the civil damages provided for in section
25 2520.”.

1 (c) (1) Section 2511 (2) (b) is amended by inserting
2 the words "or otherwise engage in electronic surveillance,
3 as defined in chapter 120," after the word "radio".

4 (2) Section 2511 (2) (c) is amended by inserting the
5 words "or engage in electronic surveillance, as defined in
6 chapter 120," after the words "oral communication" and
7 by inserting the words "or such surveillance" after the last
8 word in the paragraph and before the period.

9 (3) Section 2511 (2) is amended by adding at the
10 end of the section the following provisions:

11 "(e) Notwithstanding any other provision of this title
12 or sections 605 or 606 of the Communications Act of 1934,
13 it shall not be unlawful for an officer, employee, or agent
14 of the United States in the normal course of his official duty
15 to conduct electronic surveillance as defined in section 2521
16 (b) (6) of chapter 120 without a court order for the sole
17 purpose of—

18 "(i) testing the capability of electronic equipment,
19 provided that the test period shall be limited in extent
20 and duration to that necessary to determine the capabil-
21 ity of the equipment, that the content of any communi-
22 cation acquired under this paragraph shall be retained
23 and used only for the purpose of determining the capa-
24 bility of such equipment, shall be disclosed only to the
25 persons conducting the test, and shall be destroyed upon

1 completion of the testing, and that the test may exceed
2 ninety days only with the prior approval of the Attor-
3 ney General; or

4 (ii) determining the existence and capability of
5 electronic surveillance equipment being used unlawfully:
6 *Provided*, That such electronic surveillance shall be lim-
7 ited in extent and duration to that necessary to determine
8 the existence and capability of such equipment, and that
9 any information acquired by such surveillance shall be
10 used only to enforce this chapter or section 605 of the
11 Communications Act of 1934 or to protect information
12 from unlawful electronic surveillance.

13 “(f) Nothing contained in this chapter, or section 605
14 of the Communications Act of 1934 (47 U.S.C. 605) shall
15 be deemed to affect the acquisition by the United States
16 Government of foreign intelligence information from inter-
17 national communications by a means other than electronic
18 surveillance as defined in section 2521 (b) (6) of this title;
19 and the procedures in this chapter and chapter 120 of this
20 title, shall be the exclusive means by which electronic surveil-
21 lance, as defined in section 2521 (b) (6) of chapter 120, and
22 the interception of domestic wire and oral communications
23 may be conducted.”.

24 (d) Section 2511 (3) is repealed.

1 (e) Section 2515 is amended by inserting the words "or
2 electronic surveillance, as defined in chapter 120, has been
3 conducted" after the word "intercepted", by inserting the
4 words "or other information obtained from electronic surveil-
5 lance, as defined in chapter 120," after the second appearance
6 of the word "communication", and by inserting "or chapter
7 120" after the final appearance of the word "chapter".

8 (f) Section 2518 (1) is amended by inserting the words
9 "under this chapter" after the word "communication".

10 (g) Section 2518 (4) is amended by inserting the words
11 "under this chapter" after both appearances of the words
12 "wire or oral communication".

13 (h) Section 2518 (9) is amended by striking the word
14 "intercepted" and inserting the words "intercepted pursuant
15 tion has been intercepted, or about whom information has

16 (i) Section 2519 (3) is amended by inserting the words
17 "pursuant to this chapter" after the words "wire or oral
18 communications" and after the words "granted or denied".

19 (j) Section 2520 is amended by deleting all before sub-
20 section (2) and inserting in lieu thereof: "Any person other
21 than a foreign power or an agent of a foreign power as
22 defined in sections 2521 (b) (1) and 2521 (b) (2) (A) of
23 chapter 120, who has been subject to electronic surveillance,
24 as defined in chapter 120, or whose wire or oral communica-

1 tion has been intercepted, or about whom information has
2 been disclosed or used, in violation of this chapter, shall (1)
3 have a civil cause of action against any person who so acted
4 in violation of this chapter and”.

95TH CONGRESS
1ST Session

H. R. 7308

A BILL

To amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

By Mr. RODINO

MAY 18, 1977

Referred to the Committee on the Judiciary

NOVEMBER 4, 1977

Referred jointly to the Committee on the Judiciary
and the Select Committee on Intelligence

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